IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

OP.No. 3429 of 2000(G)

PETITIONER:

THE MANAGER,
SNM COLLEGE,
MALIANKARA.

BY ADV. SRI.DINESH R.SHENOY

RESPONDENTS:
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1. **THE STATE OF KERALA, REPRESENTED BY THE SECRETARY, HIGHER EDUCATION (D) DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

2. **T.KESAVAN, SELECTION GRADE LECTURER, SNM COLELGE, MALIANKARA.**

BY ADV. SRI.K.P.VIJAYAN for R2
SMT.ROSY GEORGE
SMT.C.B.SUMA DEVI
SRI.SURESH SAMUEL
SRI.V.M.SYAM KUMAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 18/06/2007 ALONG WITH CRP NO. 653 OF 2004, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.56292000 IN O.P.NO.3429/2000 G

CLOSED

18/06/2007 **SD/-THOTTATHIL B.RADHAKRISHNAN,**
J U D G E.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE AGREEMENT DTD. 11/10/72 BETWEEN GOVERNMENT AND HMDP SABHA.**

EXT.P2: **COPY OF THE REPRESENTATION DTD. 19/12/1998 SUBMITTED BY THE PETITIONER.**

EXT.P3: **COPY OF JUDGMENT IN O.P.NO.21718/99 DTD. 20/08/99.**

EXT.P4: **COPY OF TLETTER DTD. 15/09/99 SUBMITTED BY THE PETITIONER TO 1ST RESPONDENT.**

EXT.P5: **COPY OF G.O.(RT) NO.1511/99H. EDN. DTD. 20/12/1999.**

2ND RESPONDENT'S EXHIBIT:

EXT.R2(A): **COPY OF COUNTER AFFIDAVIT DTD. 14/12/99 FILED BY THE RESPONDENT IN C.M.P.NO.1927/99 IN CRP.899 OF 1999.**

/TRUE COPY/

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 3429 of 2000 (G) & C.R.P.No.653/2004(B)

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Dated this the 18th day of June, 2007

J U D G M E N T

Sri.T.Kesavan, the petitioner in C.R.P.No.653/2004 was a Professor of S.N.M.College, of which the petitioner in O.P.No.3429/2000 is the Manager. The Manager compulsorily retired that teacher on counts of indiscipline. The University Appellate Tribunal set aside the order of compulsory retirement. This Court in C.R.P.No.2034/1997,confirmed that decision of the Appellate Tribunal. In the meanwhile, the Manager had engaged Smt.P.V.Atma and Smt.P.P.Jeeju, as temporary teachers, as against the vacancy which he took as vacated by the compulsory retirement of Sri.T.Kesavan. Disposing of the aforesaid C.R.P.No.2034/1997, this Court directed that the Government's liability to pay salary under the direct salary scheme shall not result in double payment.

2. O.P.No.3429/2000 is filed by the Manager seeking a direction that the amounts due to the aforesaid, Sri.T.Kesavan, on account of his reinstatement shall be paid by the Government, while the Manager has to pay the amounts due to the aforesaid teachers, who had worked temporarily.

3. C.R.P.No.653/2004 is filed by Professor T.Kesavan, raising two issues during the course of execution of the decree granted by the Appellate Tribunal. Firstly, it is urged that the decree holder was entitled to interest on the amount due. Secondly, it is contended that there is an error in the calculation regarding the total amounts due under that decree of the Tribunal.

4. Dealing with the contentions in O.P.No.3429/2000, it has to be noticed that the last pay drawn by Professor T.Kesavan has to be determined for the purpose of fixing his retiral dues. He was the teacher who was in regular service. Therefore, the liability of the Government for the payment of the emoluments of Professor T.Kesavan under the direct payment scheme has to be

preferred to the payment of emoluments to the two teachers, who had temporarily worked as against the vacancies that occurred owing to the compulsory retirement of Professor T.Krishnan, which was later set aside by the Tribunal. It is so declared.

5. Reverting to C.R.P.No.653/2004, the claim for interest made by the decree holder is quite unsustainable because the decree provides only for payment of backwages and not payments of interest. That contention, therefore, fails. In so far as the contention regarding recalculation of the total amounts due towards the principal amount due to the decree, after hearing counsel on both sides, I am satisfied that the said question requires a second look at the hands of the executing court.

6. In the result, original petition No.3429/2000 is allowed, declaring that the Government is liable to make payment of salary and other amounts due to Professor T.Kesavan on account

of his reinstatement in service and, it is directed that such amounts shall be released by the Government. The executive decisions impugned in O.P.No.3429/2000 contrary to the aforesaid declarations are quashed. It is further clarified that if any amounts have been paid by the Government towards salary of the other two teachers, namely, Smt.P.V.Atma and Smt.P.P.Jeeju, such amounts shall be adjusted towards the amounts payable on account of Professor T.Kesavan.

C.R.P.No.653/2004 is allowed in part remitting the question of calculation of the total amount due to the decree holder under the decree of the Appellate Tribunal. It is clarified that the petitioner is not entitled to any amount by way of interest.

THOTTATHIL B.RADHAKRISHNAN
Judge

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.3429 of 2000 (G)
and C.R.P.No.653/2004

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J U D G M E N T

18th June, 2007